Morris, Craig

From: Bob Wieden (b)(6)
Sent: Thursday, February 03, 2011 12:08 PM
To: TMFeedback
Subject: Trademark Litigation Experts

Please identify whether you are a trademark owner or practitioner?
Trademark owner

In approximately the last 5 years, please describe any instances of which you have first-hand knowledge where a small business may have been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner.
As a product developer, I launch many new ventures around the products we develop. We have been the target of a couple shady characters that claim they "own" the trademarked word across all classifications. The most egregious person is Leo Stoller and his www.rentamark.com, he is the most litigious man I know. It was a total shakedown – they knew I had a new product line in the marketplace and I was an easy target. They gave me an offer that if I paid them a quarterly license fee and a 5% royalty – I could use their mark. Of course I would have to pay them as long as the product was in the market and the 5% was only for the first two years so that number could go up. When I explained that my IP counsel advised me that they had no enforcement position, I was immediately over-nighted a Cease & Desist letter. This was followed with a threat to file in Court in a City/State that would make it very expensive to fight. This trademark squatter was so brazen to show me how they "protect" and "execute" this charade to profess their intellectual property. He told me they use a common bolt (as the product) and told me that they have the same word that I was using trademarked in the classification for Aircraft – so that is how they protect that classification. He admitted that the product isn't used in commerce but the USPTO doesn't know that. He just keeps producing documents (or just shows an invoice that he sold t to another shell company) that shows that he is in the market of selling it and voila – he owns it. I was astonished. He and his outfit are totally crooked!!!

Please describe situations where you have been involved in receiving a cease-and-desist letter. Anecdotal information might include, but is not limited to, a description of whether the letter resulted in the small business ceasing its use of one or more marks, or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against the small business owner.
Once I received the Cease and Desist letter and many threatening phone calls afterward, I convened the Board of Directors to look at our options. It was either start paying lawyer/court fees or putting that money to use to change our brand and product name. Our lawyers wanted to fight (they always do since they get paid either way). After looking at the many other court filings that this company has conducted against other companies, we decided to change the name of our Company, change the name of 1 of our products, design new packaging, re-label all products, and file all new corporate paperwork. This probably cost my company about $50,000 which could of went to building our business.

Please describe situations where you have been involved in trademark litigation in state or federal courts.
I have never let it get this far.

Do you think trademark owners currently encounter the problem of other trademark owners using their trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow? If so, how significant is the problem?
The U.S. has become the land of the IP squatters and the lawyers have set it up for frivolous litigation. This industry is prevalent because lawyers have joined these individuals to make a quick buck. If a company has a trademarked word across many classifications – most would just be waiting to execute litigation and aren't using the word in commerce in all classifications. It would be easy to spot.

Do you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the

law?
I would guess trademark is just easier to get a payoff to settlement so that's why we keep seeing it.

Do you think the USPTO has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should the USPTO do?
Yes, as mentioned above, the USPTO has responsibility to at least monitor these "trademark squatters" – it is easy to REALLY understand if they have a product in commerce to back up the use of the classification.

Do you think the U.S. courts have a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should the U.S. courts do?
In our case, Rentamark had a bunch of lawyers on staff and that is all they do – push litigation. They do nothing for the economy – they just take off the backs of legitimate business.
The Courts know who the perpetrators of this charade are but they have no authority to shut it down. The lawyers aren't going to help since they are making money on this also. Yes, I could of went to Court and won my case but it is a problem a small business doesn't need or want to pay for…

What other U.S. agencies may have a responsibility to do something about the problem?
Department of Justice – these guys are no more than professional extortionists – they should be treated as such.

Do you think Congress has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should Congress do?
Until this country gets a hold of the problem with stopping frivolous lawsuits, this issue isn't going to stop. Why would the trial lawyers want this to stop? You will also notice that Leo Stoller has won settlements from many big companies because it is cheaper to settle than for them to use their lawyers to fight – it actually saves them money.

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